



*just and practicable, all proceedings then pending.*” See City of Naperville’s Request for Judicial Notice, Ex. 1, 30-31 (emphasis added).

4. Atlas’s complaint for patent infringement was filed on November 30, 2015 – just one day before the changes to the Federal Rules. Courts in this district have found that “retroactive application of amendments to the Federal Rules of Civil Procedure is encouraged.” *Galvan v. Krueger International, Inc.*, No. 07-C-607, 2011 WL 111576 at \*5 (N.D. Ill. Jan. 13, 2011). Thus, the court should hold Atlas to the *Iqbal* and *Twombly* pleading standard.

5. Atlas has conceded that its complaints filed on November 30, 2015 should be required to satisfy the *Iqbal* and *Twombly* test, and not Form 18. See *Atlas IP, LLC v. Pacific Gas and Electric Co.*, 3:15-cv-05469, Dkt No. 17 at p. 2 (N.D. Cal. Jan. 27, 2016)

6. Under *Iqbal* and *Twombly*, a complaint should be dismissed under Rule 12(b)(6) when it fails to “give the defendant fair notice of what the...claim is and the grounds upon which it rests.” See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted).

7. Because Atlas’s complaint fails to (1) allege facts that make infringement by Naperville plausible, (2) identify any asserted claims, and (3) specify an infringement theory, i.e., direct, indirect, literal or doctrine of equivalents, it fails to meet the *Iqbal* and *Twombly* pleading standard. The Court should dismiss Atlas’s complaint in its entirety.

WHEREFORE, for all the forgoing reasons, and for those set forth more fully in the Memorandum in Support, filed herewith, defendants respectfully request that the Court dismiss Atlas’s complaint, and grant such other and further relief as the Court deems as just and proper.

Dated: February 9, 2016

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, George J. Tzanetopoulos, an attorney, certify that on February 9, 2016, a true copy of the foregoing **MOTION TO DISMISS** was served on all attorneys of record via the United States District Court's CM/ECF system.

/s/ George J. Tzanetopoulos